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Human dignity: culturally different, nevertheless universal

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RIGHT NOW

December 2015

Editors' note

Dear IFMSA,

At the Woco in September, we decided to bring out a new edition of the Right Now, which is a project by SCORP-NL. With the Right Now we try to get attention for recent events that have great implications for Human Rights. And at this very moment, a lot of recent events leap out. Millions of people are on the move. They have fled because of warfare and violence. They are living in insecurity in other parts of their country, or were forced to move abroad. With the 'help' of human smugglers, they are

also trying to reach Europe. Thousands of them died trying doing so, and also thousands were sold into slavery by these human smugglers.

Granting human rights to others is just as much an issue as ever. Due to recent events, it has become a recurring theme. On the 13th of November, Paris was victim of a major terrorist attack. Afterwards, many people suggested we should close our borders and try to prevent refugees from entering the European Union, because they would a threat to our safety even though these people have nowhere to go. So

how much are we prepared to help them? Are we responsible for their suffering? Should we shelter them till saver times?

Another important event took place in October this year. The United Nations (UN) celebrated its 70th birthday. In 1945, at the end of World War II, the representatives of 50 Nations came together in San Francisco from the 25th of April till the 26th of June. Their purpose was to establish an organisation that would guard the peace globally and help build a better world. This year we remember the goals of the UN and make new plans for the future. ■

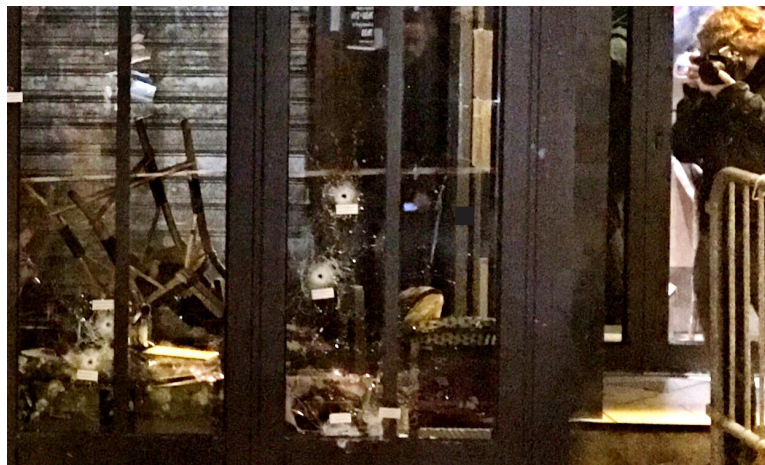
Forty minutes of violence

On the 13th of November, just before midnight, there was a major terrorist attack in Paris. A series of coordinated attacks occurred in Paris and its northern suburb, Saint-Denis. Three suicide bombers struck near the Stade de France, followed by suicide bombings and mass shootings at cafés, restaurants and a music venue. In response, a state of emergency was declared, and temporary border checks were closed.

The attackers killed 130 people, including 89 at the Bata-

clan theatre, where they took hostages. The Islamic State of Iraq and the Levant (ISIL) claimed responsibility for the attacks, saying it was in retali-

ation for the French airstrikes on ISIL targets in Syria and Iraq. The President of France, Hollande, said the attacks were an act of war by IS. ■



Café Bon Bière where the attackers killed five. Photo: Roberto Maldeno / Flickr



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Why are people fleeing to Europe?

More and more refugees are coming to the European Union to seek a better life. A lot of them are coming from the Middle East and are fleeing because of war and violence. About 4 million people were forced to leave Syria due to the ongoing civil war between several political and religious entities. Many of the refugees are living in countries close to Syria, like Lebanon, Iraq, Jordan and Turkey. But the impact of the Syrian crisis, including on the economy, demographics, political instability, and security, continues to deepen in these countries. With millions of people seeking shelter and these countries not having the means to provide for them, their hospitality will be extremely stretched. For refugees it is often very difficult to get asylum granted. The war in Syria started almost four years ago and many people are losing faith that it will end soon and they can return home. They are living in impoverished conditions and are sometimes not even allowed to work legally, and have very limited access to basic needs, such as healthcare and proper education. Exploitation is often a fact. Because they have to work often illegally, they cause problems for the local community. Because of this cheap, illegal labour, the wages of the locals also are affected.

Europe does not shelter the main share of these millions of refugees, but we are noticing that the number of refugees fleeing to Europe is increasing. This is because in Europe, they have a better chance for getting asylum and rebuild their lives. But there is a catch. If you want to seek asylum in a European country, you can only do that in that particular country. That is why so many are crossing many miles and can not go to the consulate department of the German Embassy for example in the nearby region to ask for asylum. ■

Who pays the ferryman?

Because of armed conflicts, poverty and the fear of prosecution, many people are on the move from their own country to seek a better future elsewhere. In 2014, many refugees who fled to Europe came from Eritrea, Somalia, Afghanistan and Syria. In these countries, many human rights are violated. Refugees use different ways to enter the European Union. Some are going by foot, and others by boat. Migration itself is not illegal, but if you are a citizen of a country outside the EU, you will need to prove your identity and present official papers to border guards/authorities when you enter the EU for the first time. These include a passport, but also a work permit and or resident permit if you want to stay in an EU country for more than three months.

After four years, the war in Syria seems to go on and on and many refugees are living in bad conditions. Peace and stability does not seem to be within reach in the near future. That is why thousands are risking their lives to come here. But why not go by plane, or a reliable boat? A flight from Beirut to Dusseldorf costs 268 euro's (give or take). Yet a human trafficker asks about 2.500 euro's per person to smuggle you in unsafe conditions across the Mediterranean Sea in a small boat. Thousands and thousands have died trying to get here. Why not take a plane?

In 2001 the nations of the European Union made the following decision: airline companies and other companies who would traffic people without

a legal visa, would pay for all costs that will be made to return that person to his or her country of origin. So the responsibility for controlling the borders was partly shifted to these private companies. At the check-in, the person behind the counter is checking that there will be no person without visa to board a plane or a boat, which makes it much harder for refugees to find safe transport. The chance to get asylum granted has to be asked in the country you where you want to stay and a legal visa is difficult to get. This is why you have to travel in such an unsafe way to Europe.

The EU tries to control the number of people who want to enter Europe by heavily guarding its external borders. That is why we build a great, big fence on the Greek-Turkish border in 2013. It did not help, because the migrants just took another route and the problem just shifted. At the moment, many people are trying to enter Europe via Bulgaria. They move through Eastern Europe to countries like Germany and Sweden. It is very difficult to reach Europe over mainland and here also refugee pathways keep shifting. Recently, more and more people are trying to enter the EU by walking all the way to Finland by Russia. Like all the other ways, this route is very treacherous and dangerous. Especially now winter is approaching, people will be risking their lives here too. Also, at sea the migration routes are shifting. A few years ago, many people tried to reach Italy and Spain, the▶▶



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West en Central Mediterranean routes. More recently, refugees are getting on a boat in Turkey and try to reach the Greek islands like Kos or Lesbos.

In October 2013 a new operation to control the European borders 'Mare Nostrem' started to tackle the increase of migrant flows during the second half of the year and consequent tragic ship wreckages near the island Lampedusa. Soon afterward, representatives of the EU wanted to cancel the same operation, because they said it created a new problem. Because of the navy ships which were on surveillance in the area, it was easier for human smugglers to abandon their ships at sea, because there was a bigger chance stowaways would be rescued by the ships of Mare Nostrem. In the end, the operation was substituted for Triton and Poseidon in 2014. Afterwards, the EU was much criticised by Human Rights organisations, because they said Europe was too busy to protect it's own interests and thinking too little about the refugees and their conditions.■

SCHENGEN?

The Schengen area and cooperation are founded on the Schengen Agreement on the 14th of June 1985 between Belgium, Germany, France, Luxembourg and The Netherlands. The Schengen area represents a territory where free movement of persons is guaranteed. The signatory states have abolished all internal borders in lieu of a single external border. Here common rules and procedures are applied with regard to short stays, asylum requests and border controls. An important part of the Schengen agreement is the Visa Code. With only one visa, it is possible to travel through the Schengen area.

The end of Schengen?

Even though the refugee crisis has been a recurring theme for a while, this problem was mostly situated in the southern countries. In 2011 Italy tried to get other EU countries to re-evaluate the (lack of a) common European asylum system, but not many were interested. Soon afterwards, Italy started granting refugees a 'humanitarian visa' so they could travel to other countries in the Schengen area. A lot of other countries protested heavily. France stopped trains loaded with Tunisian refugees from Italy and Denmark started controlling its own border again. Germany and Sweden followed, because they could not cope with the huge amount of people arriving and closed their borders for a while. The European Council reacted to these events and decided that only they could decide if it would be legally possible for a country to close it's borders. They made a few exceptions. When a country has to deal with an international, huge event, if there has been a terrorist attack, or if the checkpoints on Europe external borders fail, a member state of the EU has permission to close its border temporarily.

In 2015 the refugee crisis grew and more northern countries had to face facts as well. In April, several members of the EU tried to reach a new agreement on the admission of refugees, but not much progress was made. The term "crisis" has been widely used since April 2015, when a number of boats carrying migrants sank in the Mediterranean Sea, resulting in the deaths of around 1,200 people. Following the

shipwreck on the 19th of April, the European Council held a meeting to discuss the situation of migrants in the Mediterranean Sea. In the summer this year, the crisis reached a new peak and in the autumn the countries representatives came together again to discuss how Europe should tackle it more efficiently. Yet again, it proved difficult to reach an agreement.

In the autumn, Germany closed its borders temporarily and some countries, like Hungary, build a fence to control the flows of refugees. Because of these decisions, the Schengen Agreement was violated. In the recent months, the Council of the European Union has granted permission to six countries to close its borders.

On the 13th of November, France also closed its borders temporarily after the terrorist attack in Paris. This meant that a citizen of Europe would be asked to identify himself on the borders in a long while. ■

The Valetta Summit

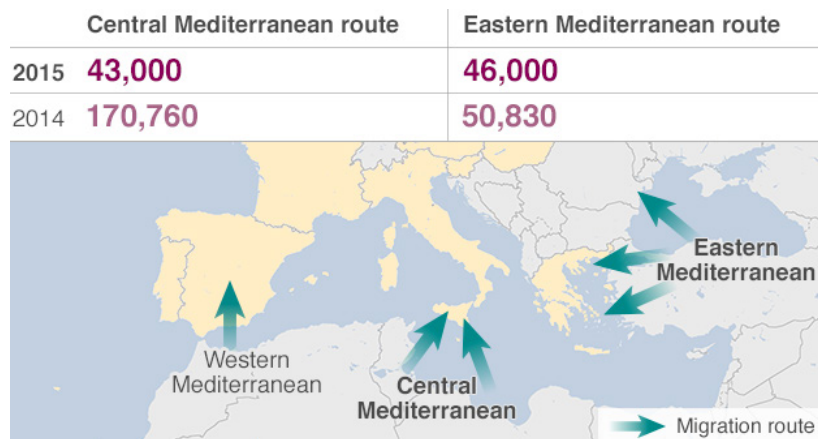
From November 11th till the 12th was the Valetta Summit in Malta on the migration crisis in which European and African leaders discussed the European migrant crisis. The summit resulted in the EU setting up an Emergency Trust Fund to promote development in Africa, in return for African countries to help out in the crisis. On the 12th of November, the European and African leaders signed an agreement to set up an Emergency Trust Fund to help development in African countries as well as to encourage



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rage those countries to take back migrants who arrived in Europe. The fund pledged €1.8 billion in aid. An informal summit of EU leaders was held just after the Valletta Summit ended. The key points discussed included the threat to the Schengen Area, securing Europe's external border and relations with Turkey. ■



Source: Frontex, BBC

The Dublin Regulation

An asylum seeker means a person who has applied for asylum under the 1951 Refugee Convention on the Status of Refugees on the ground that if he is returned to his country of origin he has a well-founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group. For as long as his application or an appeal against refusal of his application is pending, he remains an asylum seeker. A refugee means an asylum seeker whose application has been successful. Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection.

Asylum is a fundamental right; granting it is an international obligation, first recognised in the 1951 Geneva Convention on the protection of refugees. In the EU, an area of open borders and freedom of movement, countries share the same fundamental values and States need to have a joint approach to guarantee the standards of protection for refugees. Every single asylum application lodged within EU territory needs to be examined. Each EU coun-

try must be able to determine if and when it is responsible for handling an asylum claim. The aim of the Dublin Regulation is to ensure that one Member State is responsible for the examination of an asylum application, to deter multiple asylum claims and to determine as quickly as possible the responsible Member State to ensure effective access to an asylum procedure. This usually means the country in the Schengen area where the migrants arrived. It also means that a refugee cannot simply choose where to seek asylum when he or she has arrived in Europe. The recast Dublin Regulation entered into force in July 2013 and is aimed at increasing the system's efficiency and ensuring higher standards of protection for asylum seekers falling under the Dublin procedure. It contains improved procedural safeguards such as the right to information, personal interview, and access to remedies as well as a mechanism for early warning, preparedness and crisis management. It applies to applications for international protection lodged as from 1 January 2014. ■



Indian artist Sudarsan Pattnaik finished the work of the young boy Aylan Kurdi, who washed ashore after his death was one of the 89 confirmed deaths in the migrant boat tragedy in September 2015. Photo: India.com



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The European Union mandatory refugee quota

In May 2015, the European Council introduced the mandatory refugee quota to try to solve some of the problems that the refugee crisis is creating. Germany, Sweden, Austria, Italy and Greece are carrying an unfair high share of the burden now refugees are coming to Europe. With the mandatory refugee quota, there would be a fairer distribution of refugees across Europe and these countries would be partly relieved of

their duties. In case of an emergency this system should provide a back-up if needed. At the moment, the amount of requests for asylum differs very much per EU country. In June it was proposed to make take on the system on a voluntarily basis, so the EU countries could start to redistribute 32.265 refugees and take up about 22.504 refugees who were camping just outside the external EU borders and who tried to get through.

There was much resistance by certain countries to this new system. The Visegrad group, an alliance between Poland, Hungary and former Czechoslovakia, reacted against the proposal made in the European Parliament. At first, this meant no decision could be reached. Even when a few weeks later a quorum for the mandatory was reached after a vote, they remained in strong opposition. ■



...ishing his sandsculpture portraying the 3-year-old
...ore on the 2nd of September at the Turkish Coast. His
...ed deaths of migrants on the Mediterranean Sea in
...m

The Blue Card

With the increase in ageing population, Europe was forced to accept foreigners from countries outside the EU to live and work here. They try to attract highly educated persons by granting them a Blue Card. A Blue Card is based on the American Green Card. It is a work permit for people from countries outside the EU borders. If a person wants to apply for a Blue card, there are a few criteria they have to meet. A work permit and residence can only be granted if this person is highly educated, has a contract, and his or her wages are 150 percent higher above the average wages in the area of future settlement. Individual member states of the EU have the right to overlook the last criteria, if manpower in certain job areas is much needed. The Blue Card gives the right to bring near family members across the borders of the EU and is legally valid for a term of four years. It can only be granted if the person in question also has a medical insurance, a valid visa and can prove him or herself to be fully qualified. ■



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Human dignity: culturally different, nevertheless universal

Human Rights controversial

As of last spring, the refugee crisis has become a recurring theme - a crisis, because more and more people come to Europe and seek asylum than in previous years. However, to call it a crisis would be an understatement for the situation in different countries of origin. This certainly applies to Syria, where for many years civil war has consumed and almost destroyed the country. It is an even bigger understatement for countries where "relief in the region" takes place, with a sturdy underestimation of the distances (the road from Damascus to Istanbul is comparable to that from Amsterdam to Barcelona). In the European Union it is a matter of hundreds of thousands refugees; in Lebanon, Turkey and Jordan it is a matter of millions. However, that does not mean that the numbers here are small. What makes COA-barracks in the Netherlands different from tents around Beirut, is the reality that refugee children here can go to school and cannot in Lebanon.

Everywhere in Europe pleas can be heard for closing the borders. What does closing the borders mean? The Mediterranean Sea cannot be reclaimed, the shipwrecked must be saved, Hungary tarts up fen-

ces, Bulgarian border guards shoot warning shots, but with live ammunition.

I do not ask this question starting from the - to my experience unrealistic - view that everybody should be let in. There is however another question that we should ask ourselves: What is the view we have on the people in a country like Syria when the thought arises that "the" crises is resolved by segregating them from "us" with walls and barbed wire? With that question in mind, we have to ask ourselves: Do we want a situation like that?

"Universality is sometimes mistaken for uniformity of human rights"

Those questions can be asked as a moral question, and they are also about people and their rights. When in 1989 the "wall" between communistic states and free democracies was resolved, a period of almost euphoric worldwide recognition of the Universal Human Rights began. My colleagues will think about the great, idealistic Vienna Declaration on Human Rights by the United Nations in 1993. In the meanwhile more and more political leaders demand in the name of the people - their people - the right to give their

"own" explanation to the human rights. That is invariably an explanation with less freedom and more enforced uniformity. Their scapegoats are usually human rights activists or judges who allegedly "over ask", for example, on the subject of the right to vote for detainees or openness about homosexuality. Was - as some critics ask themselves - the thought of universal human rights a bridge too far?

The critical movements are certainly not incomprehensible. Universality is sometimes mistaken for uniformity of human rights. When we count all treaty provisions that describe human rights, the codification of that does seem to have gone too far. In the meantime, many of those formulations have become new compromises to give states space for elaboration. Elaborating human rights is indeed their national authority, and if it is truly with the needs of the people in that society in mind, their right. But often the leaders in those countries are busier with strengthening their own position than with the rights of their citizens.

Different from what the story of the "clash of civilizations" wants us to believe, there is no world map with differently coloured parts representing different religions and different values. Not even ►►



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considering the differences between the US and Europe, neither the “West”, nor the “South” nor the “East” are one and the same. In all the continents there are people who interpret their lives in fixed patterns of time and place, besides people who are more mobile and whose lives deploy in multiple episodes. The frictions and contrasts do not go by lines on the map, but straight through cultures, religions, countries and cities.

A population that is equal minded, patriotic and, especially, their leaders adoring is the dream of every authoritarian regime. That is why nowadays these leaders are so eager to be chosen democratically. In the 21st century however, not a single country will solely accommodate people who live their lives in their own circles along a route that is already outlined for them. Certainly, if that is what people want and freely accept, that is their right. But where this becomes too cramped for people and the fixed patterns of life are not at all free choices anymore, but are enforced by inspectors and intimidation, human rights are being violated.

The moment at which the solid centre of personal existence becomes a straitjacket, people start looking for another destination. That is often a big city in their own country or the metropole in a postcolonial context. There has been a worldwide migration to cities for decades. Again and again people arrive there with great sacrifices to start

building a new future. For that reason they are not all saints, but they are the migrants of the present, just like the Dutch dredgers in countries far away, architects and development workers are in their way citizens of the 21st century.

All this brings about a transformation in human rights. It is no longer a matter of only having the freedom to let other religious or political sounds be heard in your own circle. Important human rights are those rights too that make it possible to start new life projects: the right of free choice of labour, of health care, of sexual self-determination, of migrant workers. Human rights have many faces, because there are so many people with their own face and their own view on existence.

That is not all over the world the same, nor something that can be made uniform depending on state borders, as if any society can be or stay homogeneous. State citizens, provided that the constitution is respected, have the democratic fundamental right to decide on these matters. Without the protection of minorities a government is not truly a constitutional state. After all, a democratic government must translate the needs of civilians in their rights and duties. Really universal and truly fundamental is exactly the recognition of everybody's personal dignity in his or her concrete life situation, in the state or legal order where he or she belongs. Therefore, it will

come down to the possibilities and willingness of a migrant to become citizen in the country where he or she belongs, with the rights and duties that come with it. Those possibilities, with that willingness, are the democratic fulcrum of human rights. Putting effort into that is just as important for the people who will be faced with changes in their familiar environment as for those who out of necessity have to start building a new future elsewhere. To accept and to be accepted are two sides of the same coin.

Human dignity

Meanwhile, there is something that should really alarm us about the thought that the borders must be closed, to keep society homogeneous. Such a thought as quasi-“solution” of the migrant crises shows us that the mental borders have been closed for a long time. Sometimes those borders in our heads are being rattled, for example by the sight of Aylan, the toddler with a shirt just as red and jeans just as blue as our cousin or the boy next door, on the beach of Bodrum. Would that picture have brought about the same shock of recognition if it was a dark skinned little boy in a little djellaba?

The speech of author Navid Kermani on the 18th of October in the Paulskirche was a wholehearted complaint against the regimes in the Arabic world that restrain the liberty of their own citizens, and also against the ►►



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European politicians, who for years could not be bothered about the havoc the regimes in Syria and Saudi-Arabia were creating. In their heads, long before the thought of stricter border control arose, lines have been drawn between haves and have-nots of human rights. Sometimes that is presented as realism, sometimes as cultural relativism, but from the point of view of the people in the Levant of all sorts of cultures and beliefs, it comes down to the denial of their equality as human beings and taking away their prospect for a life in dignity.

The key concept of thinking about human rights is the exact notion of an inalienable, to every person without distinction own dignity. It can be found in article 1 of the Universal Declaration of Human Rights and in article 1 of the far more recent Charter of Fundamental Rights of the European Union. That does not have to mean everyone understands it in the same way. But the idea that it is a typical product of Western culture that has no "legitimacy" elsewhere is utterly incorrect. The differences in interpretation underline that it is a, for every person, relevant and recognizable benchmark. What it means when that dignity is denied, no matter under which phrasing, is clear for the victims of the Khmer Rouge just as well for the girl won over by a loverboy in the Netherlands or an on a false confession convicted American on death row. Historically as well, the notion of human dig-

nity is not reserved for authors that write in an European language. The unifying factor of human needs explains the diversity as well as the universality of human rights.

Universal dignity is the inexhaustible capacity of humans to be different. That can be seen in the, with defence laws hidden, individuality, but even more so in the life projects that are protected by human rights.

"To accept and to be accepted are two sides of the same coin"

Breeding ground of new ideas

Denying the universal significance of human rights proves to be - after colonial exploitation - a new way of giving riotous way to greediness for natural resources and cheap labour force. However, if we can try to see discrimination and oppression through the eyes of the other, we cannot neglect the differences in circumstances. What remains unchanged is the duty of doing justice to every human.

Human rights are articulated starting from life expectations that can vary. That is their universality without uniformity. Political leadership proves

its power not by searching for the adhesion from one part of society - one-sidedness is the path of the least resistance - but by searching for the connections, setting a good example and choosing together the new way to take.

Those new ways require encounters and places where it becomes clear that people themselves have multiple dimensions. De man after whom this lecture is named, Anton de Kom, encountered more people, more life situations - up till his death - than he asked for. But he did not evade the tasks that were loomed up by the encounters with others. Our world cannot be projected on a per country monochromatically coloured map, but is a network of cities in which people encounter each other. Amsterdam and Paramaribo are only a few of the many multi-ethnic breeding grounds of new ideas. ■

This is an extract of the Anton de Kom lecture, delivered by Ernst Hirsch Ballin (Professor of Human Rights Law at the University of Amsterdam), 22 October 2015. The full text will be published in a collection of essays on related subjects: Ernst Hirsch Ballin, Tegen de stroom (Querido, Amsterdam 2016).

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